

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 9 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

Hon'ble MR.JUSTICE P.B.MAJMUDAR Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
YES
 2. To be referred to the Reporter or not? YES :
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO
 5. Whether it is to be circulated to the Civil Judge? : NO
NO

COMMISSIONER OF INCOME TAX

Versus

NIRMA CHEMICALS WORKS,

Appearance:

MR BB NAIK with MR MANISH R BHATT for Petitioner
MR SN SOPARKAR for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/10/1999

ORAL JUDGEMENT (Per Patel, J.)

Commissioner of Income-tax, Gujarat-I, Ahmedabad
preferred an application under Section 256 (1) of the
Income-tax Act, 1961 (hereinafter referred to as the Act)

before the Income Tax Appellate Tribunal requesting for a reference on the following questions of law:

"1. Whether, the Appellate Tribunal is right in law and on facts in confirming the order passed by the Commissioner of Income Tax (Appeal) holding that action under Section 154 had become time barred in view of the fact that the said order was passed with reference to the order giving effect to the Commissioner of Income Tax (Appeal)'s order?

2. Whether, the Appellate Tribunal is right in law and on facts in confirming the order passed by the Commissioner of Income Tax (Appeal) deleting the additions made by the Assessing Officer of Rs.3,50,586/- ?"

2. It appears that the Tribunal rejected the application and hence the present application is filed before this Court inter alia requesting the Court to direct the Tribunal to raise and refer to this Court the questions of law referred hereinabove.

3. So far as Question No.1 is concerned, learned advocate Mr.Naik appearing for the Revenue submitted that, reading the order it appears that the Commissioner of Income-tax (Appeals) allowed only the expenses with regard to printing of calander and, therefore, the Assessing Office was justified in interpreting the order as he has interpreted. It is required to be noted that on page 3 of the order, several expenses are indicated claiming benefits under Section 37 (3A) of the Act. With regard to each item, submissions have been made by the assessee in writing which are taken note of. After considering all these items, the Commissioner of Income-tax (Appeals) came to the conclusion that the expenditure incurred on printing and distribution of calendars does not come within the mischief of section 37 (3A) of the Act. The learned Commissioner of Income-tax (Appeals) also observed that, in view of this background, the addition made by the Income-tax Officer is deleted. The Revenue submitted that all the items were not taken into consideration. Suffice it to say that if, according to the Revenue, the order passed by the Commissioner of Income-tax (Appeals) was required any rectification, it was necessary to approach the appropriate authority or ought to have approached Tribunal challenging that order. Nothing is done so far.

4. It is also required to be noted that as observed

by the Commissioner of Income-tax (Appeals), if Commissioner (Appeals) did not pass a speaking order with regard to other items of expenditure, the remedy available with the department is to approach the Income Tax Appellate Tribunal. It cannot be said that the Commissioner of Income-tax (Appeals) had deleted only a part of the deletion referable to an expenditure on printing and distribution of calendars. In view of this, the order passed by the Assessing Officer was held not to be sustainable by the Commissioner of Income-tax (Appeals). It is under these circumstances, the aforesaid question does not require any reference.

5. So far as the second question is concerned, in para 2 of the order, we find discussion with regard to a sum of Rs.3,50,586. The view of the Assessing Officer was that the same should have been added. The Commissioner of Income-tax (Appeals) in para 6 has pointed out that the Assessing Officer has proceeded to rectify the alleged mistake apparent from record which according to him crept into assessment order dated 26.3.1987. Such a mistake as per provisions of section 154 could have been rectified on or before 31.3.1991. Therefore, the impugned order passed by the Assessing Officer on 18.3.1992 on this point is time barred and thus the order of A.O. cannot be maintained. Further, even for the disallowance with reference to Rs.6,08,905 has been deleted by the CIT (A), and therefore, on merits also it cannot be said that there was a mistake apparent from record. Having regard to the facts, further addition of Rs.3,50,586 made by the Assessing Officer is deleted.

6. In view of what we have stated hereinabove, no referable question can be said to have arisen and hence this application is rejected.

(KMG Thilake)

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STARTORDER

SCA634489J

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6344 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF KRISHANKANT MAGANLAL MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR JR NANAVATI for Petitioners

GOVERNMENT PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/10/1999

ORAL JUDGEMENT

Learned counsel for the petitioner states that the petitioner is in possession of the disputed land. This statement of the learned counsel for the petitioner has not been controverted by the learned counsel for the respondent.

In the result, this Special Civil Application abates in view of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 and accordingly the same is dismissed.

Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

Liberty is granted to the respondents for revival of this

Special Civil Application, in case of any difficulty.

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